IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5510 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GORDHANBHAI BABARBHAI TADVI

Versus

CB PATEL

Appearance:

MR BS PATEL for Petitioner (Absent)
MRS RANJAN B PATEL for Petitioner (Absent)
RULE SERVED for Respondent No. 1
UNSERVED-EXPIRED (R) for Respondent No. 2
MR PR ABICHANDANI, AGP for Respondent No. 3
MR PF ADHVARYU for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 17/06/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

No one was present for the petitioner.

The petitioner and the present respondent no.2 Jaswantbhai Maganbhai Tadvi had contested the election of Bor-talav village Panchayat which took place on 23rd December, 2001. The Election Officer and T.D.O., Sankheda - respondent no.3 declared the petitioner as elected on 26th December, 2001 which was not objected at that time by the present respondent no.2. Thereafter, the petitioner contested his election for the post of Deputy Sarpanch. However, due to election petition filed by respondent no.2, it was postponed on 23rd January, 2002. Later, on March 8th, 2002, the election for the post of Deputy Sarpanch took place between two candidates. There were equal votes. Therefore, by 'chit', Shri Subhashbhai Bariya was declared as Deputy Sarpanch. However, respondent no.2 filed Election Petition no.6 of 2002 on 1st February, 2002 for recounting and declaration of the result. Under Section 31 of the Act, the election petition was required to be filed within 15 days from the date of the result before the Court of Civil Judge (J.D.) but it was filed late after the expiry of the period of limitation with a prayer for condonation of delay by the respondent no.2. Without issuing notice to the present petitioner, Civil Judge (J.D.), Sankheda - respondent no.1 straightaway condoned the delay by his order dated 1st February, 2002 which is challenged in this petition.

2. From the endorsement made by the office, it appears that respondent no.2, who had filed election petition with a prayer for condonation of delay before the respondent no.1, expired during the pendency of this petition. In that view of the matter, this petition has become infructuous and nothing more is required to be done in the matter as it has not come on record that his legal heirs proceeded further with the election petition filed by him before the respondent no.1. Accordingly, this petition is disposed of. Rule discharged. Interim relief granted earlier stands vacated.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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